

Before the
Administrative Hearing Commission
State of Missouri



INTERVENTIONAL CENTER
FOR PAIN MANAGEMENT,

Petitioner,

vs.

DEPARTMENT OF SOCIAL SERVICES,
MO HEALTHNET DIVISION,

Respondent.

No. 12-1960 SP

DECISION

We treat the Department of Social Services, MO HealthNet Division's motion for involuntary dismissal as a motion for summary decision, and we grant the motion.

Procedure

On October 31, 2012, the Interventional Center for Pain Management ("ICPM") filed a complaint appealing a final decision of the Department of Social Services, MO HealthNet Division (the "Department" and the "Division," respectively) of August 3, 2012, finding ICPM had been overpaid \$8128.41 for Medicaid services. The Department filed a motion for involuntary dismissal on December 7, 2012, with affidavits of Department staff, copies of the Department's decision, and the certified mail receipt transmitting it to ICPM. ICPM filed suggestions in opposition on January 25, 2013, along with an affidavit and copies of the certified mail delivery receipt.

Because the Department's motion relies on matters outside the complaint, we treat it as one for summary decision. 1 CSR 15-3.436(4). This Commission may grant a motion for summary decision if the Department establishes facts that entitle it to a favorable decision and ICPM does not genuinely dispute those facts. 1 CSR 15-3.446(6). Parties may establish facts by admissible evidence, including a pleading of the adverse party or other evidence admissible under the law. We make the following findings of fact based on the pleadings and affidavits accompanying the Department's motion and ICPM's response.

Findings of Fact

1. In a letter to ICPM dated August 3, 2012, the Department informed ICPM of its final decision that ICPM had received overpayments in the amount of \$8,128.41 (the "decision letter").
2. The decision letter also advised that ICPM had thirty days to file a complaint with this Commission, pursuant to § 208.156.¹
3. ICPM received the Department's decision letter on or before August 8, 2012.
4. In response to the decision letter, ICPM filed a complaint with this Commission on October 31, 2012.
5. October 31, 2012 was more than thirty days after August 8, 2012.

Conclusions of Law

The Department argues ICPM's complaint is untimely, and relies on § 208.156.8, which establishes the limitations period for this action:

Any person authorized under section 208.153 to provide services for which benefit payments are authorized under section 208.152 and who is entitled to a hearing as provided for in the preceding sections shall have

¹ This citation is to the 2000 version of the Missouri Revised Statutes. All other statutory references are to the 2012 Cumulative Supplement to the Missouri Revised Statutes unless otherwise noted.

thirty days from the date of mailing or delivery of a decision of the department of social services or its designated division in which to file his petition for review with the administrative hearing commission except that claims of less than five hundred dollars may be accumulated until they total that sum and at which time the provider shall have ninety days to file his petition.

The decision letter stated ICPM was required to file its complaint with this Commission within thirty days of the “date of mailing or delivery” of the Department’s decision. We need not determine in this case whether the date of mailing or the date of delivery controls because, even using the later delivery date of August 8, 2012, the filing of the complaint is untimely by nearly two months.

ICPM asserts that an agent of the Department, Kathryn Dinwiddie (“Dinwiddie”), told ICPM’s compliance officer it could have an additional sixty days to respond to the Department’s final letter.² ICPM contends Dinwiddie’s “extension” effectively tolled the statutory filing deadline for sixty days, and, therefore, the complaint was due on or before November 2, 2012. By ICPM’s calculation, the complaint was timely filed.

Because ICPM argues there was an “effective” tolling of the filing deadline but cites no statute that would toll the filing deadline, we must treat its argument as one for equitable tolling. Courts recognize “equitable tolling” to permit a party to extend a statute of limitations when, among other things, “the defendant has actively misled the plaintiff respecting the cause of action.” *Adams v. Division of Employment Sec.*, 353 S.W.3d 668, 673 (Mo.App. E.D. 2011), quoting *Ross v. Union Pac. R.R. Co.*, 906 S.W.2d 711, 713 (Mo. banc 1995) (further citations omitted). However, despite the compelling circumstances here, ICPM’s reliance on equitable tolling of the deadline imposed by § 208.156.8 is misplaced. This Commission is not a court of

² The Department filed an objection to the affidavit. While its objection may preclude ICPM’s use of the affidavit at a contested case hearing pursuant to § 536.070(12), affidavits are proper evidence in determining both motions for summary decision and motions for involuntary dismissal. 1 CSR 15-3.436(3); 1 CSR 15-3.446(6)(B).

law, and lacks jurisdiction to entertain equitable claims. *Soars v. Soars-Lovelace, Inc.*, 142 S.W.2d 866, 871 (Mo. 1940). We have no authority to grant ICPM equitable relief from the requirements of § 208.156.8.

ICPM's complaint was filed well beyond the thirty-day period following mailing or delivery of the decision letter. The untimely filing of ICPM's complaint deprives us of jurisdiction to hear it. *Community Fed. Sav. & Loan Assoc. v. Director of Revenue*, 752 S.W.2d 794, 799 (Mo. banc), *cert. denied*, 488 U.S. 893 (1988); *Springfield Park Cent. Hosp. v. Director of Revenue*, 643 S.W.2d 599, 600 (Mo. 1984). If we have no jurisdiction to hear the complaint, we cannot reach the merits of the case and can only exercise our inherent power to dismiss. *Oberreiter v. Fullbright Trucking*, 24 S.W.3d 727, 729 (Mo. App., E.D. 2000).

Conclusion

We grant the Department's motion, and dismiss ICPM's complaint because it was not timely filed. The hearing set for April 4, 2013 is canceled.

SO ORDERED on April 2, 2013.

/s/ Mary E. Nelson
MARY E. NELSON
Commissioner